

GRAHAM & JAMES

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September 29, 1989

RECORDATION NO 14705 A FILED 1425

WRITER'S DIRECT DIAL NUMBER
(415) 954-0366

10/21/1989 - 11 25 AM

INTERSTATE COMMERCE COMMISSION

The Honorable Noretta R. McGee
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

9--275A008

Attention: Mildred Lee

Dear Madam Secretary:

We enclose for recordation pursuant to 49 U.S.C. § 11303 the original and a counterpart of an Assignment and Assumption Agreement, dated as of September 29, 1989.

The Assignment is a secondary document, as defined in 49 C.F.R. § 1177.1(b). It relates to the following primary document:

Security Agreement, dated as of June 10, 1985,
filed with ICC on June 13, 1985, at 10:45 a.m.,
Recordation No. 14705.

The names and addresses of the parties to the Assignment are as follows:

Assignor: Wells Fargo Leasing Corporation
101 California Street
Suite 2800
San Francisco, California 94111

Attention: Operations Department

Assignee: Delos Leasing Corporation
101 California Street
Suite 2800
San Francisco, California 94111

The Honorable Noreta R. McGee
September 29, 1989
Page 2

A general description of the railroad equipment covered by the Assignment is as follows:

Twenty-one (21) high horsepower (3600 HP) six-axel SD45 locomotives originally manufactured by General Motors (Electromotive Division) and rebuilt by the Southern Pacific Transportation Company as SD45-2 locomotives bearing identification marks and numbers SP7540 through SP7560.

We request that this Assignment also be indexed under the name of the assignee, Delos Leasing Corporation.

A brief summary of the Assignment to appear in the index follows:

Same units as in above Security Agreement, bearing identification marks and numbers SP7540 through SP7560.

We enclose the fee of \$15.00 for recordation. Please file-stamp and return to Delos Leasing Corporation, c/o BA Leasing & Capital Corporation, Two Embarcadero Center, San Francisco, California 94111, the original Assignment and the enclosed copy of this transmittal letter.

Very truly yours,

GRAHAM & JAMES

By 
John P. Breedlove

JPB:RSB:amb
WFBN 1.103
Enclosures

cc: Robert Darling
John D. Wright
David V. Biesemeyer

Interstate Commerce Commission
Washington, D.C. 20423

10/10/89

OFFICE OF THE SECRETARY

John P. Breedlove
Graham & James
One Maritime Plaza
Third Floor
San Francisco, Calif. 94111

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/2/89 at 11:25am and assigned recordation number(s). 10163-C, 12718-F, 13001-E, 14656-B, 14705-A

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

14705-A
10/2 1989 - 11 25 AM
INTERSTATE COMMERCE COMMISSION

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT dated as of September 29, 1989, is entered into by and among WELLS FARGO LEASING CORPORATION (the "Assignor"), a California corporation, DELOS LEASING CORPORATION (the "Assignee"), a Delaware corporation, and BA LEASING & CAPITAL CORPORATION (the "Successor Assignee"), a California corporation.

WHEREAS, in a simultaneous closing: a) the Assignor wishes to assign, transfer, and convey to the Assignee, and the Assignee wishes to receive and accept, all of the Assignor's right, title and interest in and to the assets set forth in Appendix 1 (the "Assets"), b) the Assignor wishes to sell and transfer to the Successor Assignee, and the Successor Assignee wishes to receive and accept, all of the capital stock of the Assignee, and c) the Assignee wishes to grant the Successor Assignee, and the Successor Assignee wishes to obtain, the right to acquire all of the Assignee's right, title and interest in and to the Assets.

W I T N E S S E T H:

NOW THEREFORE, the parties agree as follows:

Section 1. Assignment of Assets. The Assignor

assigns, transfers and conveys to Assignee as of the date hereof all its right, title and interest in and to the Assets. The Assignee accepts and receives all such right, title and interest in and to the Assets.

Section 2. Assumption of Liabilities. The Assignee assumes and agrees to pay when due all liabilities, debts and obligations of the Assignor and its Affiliates (as defined below) hereafter arising incident to the Assets and any agreements related thereto. The Assignor and its Affiliates are released from all such liabilities, debts and obligations, including, without limitation, those arising under any guaranties. The Assignee confirms that as of the date hereof it shall be deemed a party to those agreements set forth in Appendix 1 to which the Assignor is a party, and the Assignee agrees to be bound by all the terms of, and to undertake all such obligations of, the Assignor contained therein. For purposes of this agreement, an "Affiliate" of a party shall mean a person controlling, controlled by, or under common control with such party, provided, however, that the Assignee shall not be an Affiliate of the Assignor.

Section 3. Exception. Notwithstanding the foregoing, the Assignor and the Assignee shall each be entitled, as their respective interests may appear, to pursue claims, and all their rights and remedies related to claims, for

(a) payments of indemnity now or hereafter due under the agreements related to the Assets from any obligor thereunder, and/or
(b) insurance payments or proceeds, provided, however, that any obligor's liability for such claims shall not exceed the liability it would have incurred if the assignment had not been made.

Section 4. Right to Acquire. The Assignee hereby grants the Successor Assignee the right, exercisable by written notice to the Assignee and to the parties listed in Appendix 2, to succeed to all of the Assignee's rights and obligations under this agreement. Effective upon such exercise:

(a) Subsequent Assignment. The Assignee assigns, transfers and conveys to the Successor Assignee as of the date of such notice all its right, title and interest in and to the Assets. The Successor Assignee accepts and receives all such right, title and interest in and to the Assets.

(b) Subsequent Assumption. The Successor Assignee assumes and agrees to pay when due all liabilities, debts and obligations of the Assignee hereafter arising incident to the Assets and any agreements related thereto. The Assignee is released from all such liabilities, debts and obligations. The Successor Assignee confirms that as of the date of such notice it shall be deemed a party to

those agreements set forth in Appendix 1 to which the Assignee is deemed a party, and agrees to be bound by all the terms of, and to undertake all such obligations of, the Assignee contained therein.

(c) Subsequent Assignment Exception. Notwithstanding the foregoing, the Assignee and the Successor Assignee shall each be entitled, as their respective interests may appear, to pursue claims, and all their rights and remedies related to, claims for (a) payments of indemnity now or hereafter due under the agreements related to the Assets from any obligor thereunder, and/or (b) insurance payments or proceeds, provided, however, that any obligor's liability for such claims shall not exceed the liability it would have incurred if the assignment had not been made.

Section 5. Representations and Warranties. The Assignee and, effective upon its exercise (if any) of the right contained in Section 4 of this agreement, the Successor Assignee each represents and warrants as follows, with capitalized terms having the meanings set forth in the agreements related to the Assets:

(a) Organization and Authority. It (i) is a corporation duly organized, legally existing and in good standing in its state of incorporation, (ii) has full

right, power and authority to enter into and perform this agreement and to assume and perform the Operative Agreements to which it is a party and the Notes and its performance or observance of any of its obligations thereunder does not violate any provisions of any law, any order of any court or governmental agency in proceedings to which it is a party, its Certificate of Incorporation or By-laws, or any indenture, agreement or other instrument to which it is a party or by which it, or any of its property, is bound, and will not be in conflict with, result in a breach of or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon the Ownership Interest other than Permitted Encumbrances.

(b) Litigation. There are no proceedings pending or, to its knowledge, threatened against or involving it in any court or before any governmental authority or arbitration board or tribunal which, if adversely determined, would materially and adversely affect the Equipment or its ability to enter into or perform this agreement or to assume or perform the Operative Agreements or the Notes.

(c) Title to the Equipment. The Ownership Interest is free and clear of any liens or encumbrances which result from claims against it not related to the transactions contemplated by the Operative Agreements.

(d) No Defaults. To its knowledge, no Event of Default or event which with the passing of time or the giving of notice, or both, would constitute an Event of Default under the Security Agreement has occurred and is continuing. It is not in violation in any material respect of any term of any of the Operative Agreements.

(e) Governmental Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental authority on its part is required in connection with the execution and delivery of this agreement or the assumption of the Operative Agreements or the Notes.

(f) Purchase for Investment. Subject to the right contained in Section 4 of this agreement, it is purchasing the Assets for its own account for investment and with no present intention of distributing or reselling such Assets or any part thereof, but without prejudice, however, to its right at all times to sell or otherwise dispose of all or any part of such Assets under a registration under the Securities Act of 1933, as amended, or under an exemption

from such registration available under such Act. It acknowledges that none of the Interests has been registered under the Securities Act of 1933, as amended, and that neither it nor the Lessee contemplates filing, or is legally required to file, any such registration; and it has been advised that each Interest must be held indefinitely unless such interest is subsequently registered under said Securities Act or an exemption from such registration is available.

(g) ERISA Representations. It represents that no part of the funds used or to be used by it to acquire the Assets constitutes assets allocated to any separate account within the meaning of ERISA.

Section 6. Miscellaneous. Each party to this agreement shall execute and deliver such instruments, documents and other written information and take such other actions as the other parties may reasonably require in order to carry out the intent of this agreement. This agreement and all the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This agreement may be executed in one or more counterparts, all of which taken together shall constitute one instrument. This agreement is made and entered into in California, and the laws of California shall govern the

validity and interpretation hereof and the performance of the parties hereto of their respective duties and obligations.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement.

WELLS FARGO LEASING CORPORATION

By: Robert F. Darling
Its: _____
By: Joseph B. Schubert
Its: _____

DELOS LEASING CORPORATION

By: John D. Winger
Its: _____

BA LEASING & CAPITAL CORPORATION

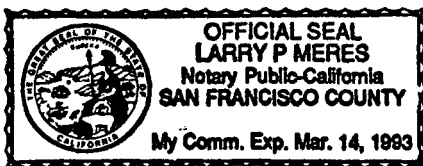
By: Perrin L. Kowitz
Its: _____

ACKNOWLEDGMENT

State of California)
) ss.
County of San Francisco)

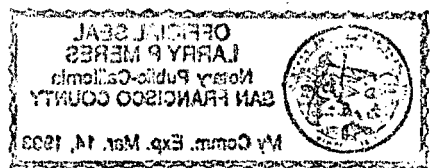
On this 29TH day of September, in the year 1989, before me, the undersigned, a Notary Public, in and for the State of California, duly commissioned and sworn, personally appeared TERRI KWIATEK, personally known to me (or proved on the basis of satisfactory evidence) to be the person who executed the within instrument as Vice President of BA Leasing & Capital Corporation, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its Board of Directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date set forth above in this certificate.



Larry P Meres
Notary Public in and for said
State

My Commission Expires Mar 14, 1993

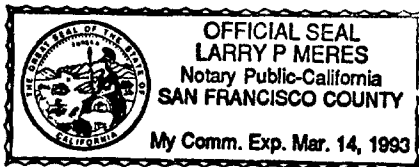


ACKNOWLEDGMENT

State of California)
) ss.
County of San Francisco)

On this 29th day of September, in the year 1989, before me, the undersigned, a Notary Public, in and for the State of California, duly commissioned and sworn, personally appeared JOHN D. WRIGHT, personally known to me (or proved on the basis of satisfactory evidence) to be the person who executed the within instrument as Secretary of Delos Leasing Corporation, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its Board of Directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date set forth above in this certificate.



Larry P Meres
Notary Public in and for said State

My Commission Expires Mar 14, 1993

ACKNOWLEDGMENT

State of California)
) ss.
County of San Francisco)

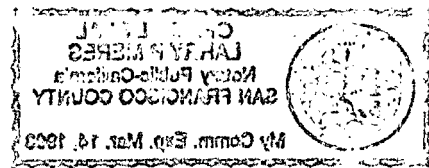
On this 29th day of September, in the year 1989, before me, the undersigned, a Notary Public, in and for the State of California, duly commissioned and sworn, personally appeared ROBERT F. DARLING, personally known to me (or proved on the basis of satisfactory evidence) to be the person who executed the within instrument as President of Wells Fargo Leasing Corporation, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its Board of Directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date set forth above in this certificate.



Larry P Meres
Notary Public in and for said State

My Commission Expires Mar 14, 1993



ACKNOWLEDGMENT

State of California)
) ss.
County of San Francisco)

On this 29TH day of September, in the year 1989, before me, the undersigned, a Notary Public, in and for the State of California, duly commissioned and sworn, personally appeared JOSEPH B. SCHUBERT, personally known to me (or proved on the basis of satisfactory evidence) to be the person who executed the within instrument as Vice President of Delos Leasing Corporation, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the within instrument pursuant to its bylaws or a resolution of its Board of Directors.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the date set forth above in this certificate.



Larry P Meres
Notary Public in and for said
State

My Commission Expires Mar 14, 1993

Appendix 1

ASSETS

All right, title and interest of the Owner (as defined in the Participation Agreement among Southern Pacific Transportation Company, Wells Fargo Leasing Corporation, and Nationwide Life Assurance Company, dated as of June 10, 1985), in:

- (1) Operative Agreements defined in the Participation Agreement dated as of June 10, 1985 as the following:
 - (a) Participation Agreement dated as of June 10, 1985;
 - (b) Acquisition Agreement dated as of May 20, 1985;
 - (c) Equipment Lease dated as of May 20, 1985, the First Amendment to Equipment Lease dated as of May 21, 1985, and the Second Amendment to Equipment Lease dated as of June 10, 1985;
 - (d) Security Agreement dated as of June 10, 1985; and
 - (e) Tax Indemnity Agreement dated as of May 20, 1985;
- (2) Notes as defined in the Participation Agreement dated as of June 10;
- (3) Equipment as described in Schedule A to the Equipment Lease dated as of May 20, 1985; and
- (4) All documents, agreements, certificates and opinions delivered pursuant thereto and all amendments and supplements thereof.

Appendix 2

Notice Parties

Nationwide Life Insurance Company
One Nationwide Plaza
Columbus, Ohio 43216

Southern Pacific Transportation Company
Southern Pacific Building
One Market Plaza
San Francisco, CA 94105
Attention: Vice President-Finance